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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 637/2017 and CM No. 21303/2017**

RAJINDER KUMAR GARG & ORS Petitioners
Through: Mr. Shekhar Gupta, Advocate

versus

HARBHAJAN SINGH (DECEASED) THR DARSHAN SINGH
POPLI & ANR Respondents
Through: Mr. Virender Singh, Adv for R-1 with
the LR of the deceased respondent

CORAM:
HON'BLE MR. JUSTICE ANU MALHOTRA

ORDER

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18.12.2018

Respondent No.2 has already been deleted from the array of parties vide order dated 30.5.2017

The petitioner vide the present petition assails the impugned order dated 9.5.2017 of the learned ASCJ (East) in Suit No. 8904/2016 vide which an application under Order VI Rule 17 CPC filed on behalf of the plaintiff represented now by the respondent seeking to amend paragraph No. 14 (a) of the plaint to read to the effect:

“ That suit has been valued for the purpose of court fee and jurisdiction as under:

*a. For the purpose of possession
Rs.5,00,000/- ”*

which was only in relation to the aspect of the suit being valued through the amendment sought for the purposes of Court Fees and jurisdiction for the purposes of possession at Rs.5,00,000/-, was allowed subject to costs as imposed thereby It has been submitted on

behalf of the petitioner herein that the said amendment was allowed vide the impugned order at a very belated stage when the matter had already reached the stage of final arguments and the contention that was sought to be raised on behalf of the respondent i.e., the plaintiff that the plaintiff of the suit learnt of the valuation of the property in question at being Rs.5 Lakhs only through exhibition of document EX.PW5/D-4 on 19.3.2016 is also apparently not correct in view of the factum of the testimony of PW5 Mr. Parminder Singh recorded on 19.3.2016 wherein he has categorically stated to the effect that the money of Rs.5,00,000/- as mentioned in receipt EX.PW-5/D-4 was taken by the deceased plaintiff Darshan Singh Popli in his presence on 20.12.2003 and also his admission that he had knowledge of all the said documents since 20.12.2003 with further more reliance having been placed on the said receipt itself of Rs.5,00,000/- indicating that it has been executed by Harbhajan Singh himself and that thus the evidence in the matter having been led and the matter having reached the stage of final arguments great prejudice has been caused to the petitioner herein by putting the clock back.

On behalf of the respondent it has been submitted that the respondent was not aware of the said document till the date 19.3.2016.

Be that as it may, during the course of submissions made, it has been submitted on behalf of the learned counsel for the petitioner that the evidence already led by the parties on the record be allowed to be treated as the evidence in the matter to which the learned counsel for the respondent herein, i.e., the plaintiff, has no opposition thereto.

Taking the said aspect into account and the factum that the amendment that has been granted is only in relation to the aspect of valuation of the suit for the purposes of Court Fees and jurisdiction, which in any event would have to be essentially determined taking into account the factum the issue No.1 framed of the issues framed on 25.8.2005 related to the aspect of whether the suit of the plaintiff which had not been valued for the purposes of Court Fees and jurisdiction and the onus having been laid on the defendants No. 1 to 5, as regards the issues No. 2,3,4 ,5 and 6 which read to the effect:

“2. Whether the suit of the plaintiff is not maintainable since the same is bad by law of limitation? (OPD 1 to 5)

3. Whether the plaintiff has no locus-standi to file the present suit ? (OPD 1 to 5)

4. Whether the plaintiff is entitled for the relief of recovery of possession as prayed for ? (OPP)

5. Whether the plaintiff is entitled for the damages? If so, at what rate and for which period? (OPP)

6. Relief.” ,

though it is not considered appropriate in the circumstances of the case to set aside the impugned order nevertheless taking into account the factum that evidence in the matter has already been led on the issues framed to the extent that evidence has been led on issues No.2 to 6, it is considered appropriate to direct that no further evidence shall be led thereon before the learned Additional District Judge concerned where the matter is now presently pending before the learned Additional District Judge, pursuant to proceedings dated

18.9.2017 in the suit which then bore No. 149/2010. However in relation to the issue No.1 which was in relation to the aspect of valuation of the suit for the purpose of Court Fees and jurisdiction, it has been submitted on behalf of the petitioner herein that even after the valuation of the suit for the purposes of Court Fees and jurisdiction at Rs.5,00,000/-, the suit is still under valued for the purposes of Court Fees and jurisdiction.

In view thereof, evidence only to the extent of issue No.1 is allowed to be led by either side.

With these observations, the petition is disposed.

ANU MALHOTRA, J

DECEMBER 18, 2018/SV